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GIFT OF A CHOSE IN ACTION. — That a court of equity will not support an imperfect gift as a declaration of trust, and that a valid gift of a chose in possession can be effected only by deed, or by a delivery of the chattel, are now established doctrines in England and in this country. The American rule as to the requisites of a gift of sealed obligations and mercantile specialties is also simple and uniform. There must be a transfer, either by deed or by delivery, of the document containing the obligation. A transfer in either mode passes the title to the document, as distinguished from the chose in action, and carries with it an irrevocable power of attorney to the transferee to collect the claim in the name of the obligee, but for his own use. This rule has been applied to bonds, notes, policies of insurance, certificates of stock, savings-bank books, lottery tickets, and the like.

In England, however, until recently, it has seemed impossible to deduce any satisfactory rule from the conflicting decisions. In *Edwards* v. *Jones*, 1 M. & Cr. 226, which was followed in *Searle* v. *Law*, 15 Sim. 95, and cited with approval in *Re Richardson*, 30 Ch. Div. 396, 401, 404, the gift of a bond was deemed ineffectual, although the bond was delivered and bore an indorsement, signed by the donor, and expressing the usual power of attorney to sue. In *Bizzey* v. *Flight*, 24 W. R. 957, also, a donee gained no interest in a certificate of stock, although the transfer was by deed containing a power of attorney. On the other hand, gifts of a policy of insurance (*Fortescue* v. *Barnett*, 3 M. & K. 36; *Sewell* v. *King*, 14 Ch. D. 179) and of a promissory note (*Richardson* v. *Richardson*, 3 Eq. 686) have been upheld, the gift being by deed with a power of attorney.

The case of *In re Patrick* (1891), 1 Ch. 82, goes far to remove this inconsistency in the English decisions. A donor, who made a voluntary assignment of certain specialty debts by a deed containing a power of attorney, but who afterwards collected the debts, was compelled to account to the donee for the money so collected. *Edwards* v. *Jones* and *Bizzey* v. *Flight* must therefore be regarded as overruled. In view of this late decision, it seems not unreasonable to expect that the English courts may see their way to dispense with an express power

of attorney, where, as in the case of a gratuitous delivery of a specialty, such a power is fairly to be implied. The arbitrary distinction now existing between gifts *inter vivos* and *donationes mortis causa* would thereby disappear. We should also have, on both sides of the Atlantic, a just, simple, and uniform rule as to gifts of choses in action.

INEVITABLE ACCIDENT A DEFENCE TO ACTION OF TRESPASS. — The rule, so well settled in America,[1] that inevitable accident is a good defence to an action of trespass for personal injuries, has not hitherto found entire favor with the English courts. There crept very early into the English law a principle, which the courts have been slow to repudiate, to the effect that he who acts voluntarily acts at his peril, and is responsible for personal injuries to another resulting from his acts, though the injury be the outcome neither of wilful wrongdoing nor of negligence.[2] The few cases in which a defence has been allowed have been decided either upon principles of expediency or upon questions of pleading. For example, in *Holmes* v. *Mather*,[3] where the plaintiff was knocked down by the defendant's runaway horses, it was held that such an accident was one of the ordinary risks of the road, which a person travelling upon the road took upon himself. In *Fletcher* v. *Rylands*[4] Lord Blackburn remarks that all the cases "in which inevitable accident has been held an excuse for what *prima facie* was a trespass, can be explained on the principle that the circumstances were such as to show that the plaintiff had taken that risk upon himself." That is, the English judges have obstinately refused to adopt squarely the reasoning of the American courts, that where a man uses due care he is not responsible for results which could not have been foreseen, and, while practically arriving at the same results in a number of cases, have based their decisions upon narrow and unsatisfactory grounds.

It is refreshing, therefore, to find Justice Denman, in the recent case of *Stanley* v. *Powell*,[5] facing the music squarely and holding that, in the absence of negligence, a man who accidentally shoots another is not liable in an action of trespass. He reviews the English cases upon the subject, and concludes that the bulk of authority in favor of the opposite view may be sifted down to a few dicta or decisions which went off on other grounds. In commenting upon the well-known case of *Weaver* v. *Ward*[6] Justice Denman says: "I can find nothing in the report to show that the court held that in order to constitute a defence in the case of a trespass it is necessary to show that the act was inevitable. If inevitable, it would seem that that was a defence under the general issue; but a distinction is drawn between an act which is inevitable and an act which is excusable, and what *Weaver* v. *Ward* really lays down is that 'no man shall be excused of a trespass except it may be judged utterly without his fault.'" Further on, in reference to the case at bar, he says: "It was argued that inasmuch as the plaintiff was injured by a shot from defendant's gun, that was an injury owing to an act of force committed by defendant, and therefore an action would lie. I am of opinion that this is not so, and that to any statement of claim which the plaintiff could suggest the defendant must

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[1] *Brown* v. *Kendall*, 6 Cush. 292.
[2] Year Book, 21 Hen. VII, p. 28 a.
[3] L. R. 10 Ex. 261.
[4] L. R. 1 Ex. 265, at 287.
[5] 39 W. R. 77.
[6] Hob. 134.